IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.5637 OF 1999

M/s Supreme Ice-Cream Stall
and others. .. Petitioners

Vs

State of Maharashtra & Ors. .. Respondents

Mr A.V.Anturkar, for the petitioners.
Mrs J.Pawar, G.P., for respondent nos 1 and 2.
None for respondent no.3.
Mr R.I.Chagla i/b Federal and Rashmikant for Bombay Environment Action Group.

CORAM : V.G.PALSHIKAR, Ag.C.J., &
D.B.BHOSALE,J.

DATE : 06.12.2005.

PC:

1. Heard the learned counsel for the parties.

2. By this petition, the petitioners have impugned the order passed by the Government of India, Ministry of Environment and Forests, on 17.10.1997. Passing of the aforesaid order was occasioned because of an application made for diversion of small piece of land which was forest land for installation of 13 sellsenal stalls at

"Bombay Point" Mahabaleshwar under Satara Forest Division in Satara District. The impugned document refers to this to which the subject on which the communication was addressed. The Government of India was required to grant approval as contemplated by Section 2 of the Forests (Conservation) Act, 1980. The Government of India, on careful consideration of the proposal of the State Government, conveyed them approval for diversion of that piece of land for installation of 13 Sellsenal stalls at Bombay Point in Mahabaleshwar subject to certain conditions. One of the conditions was that the lease shall be for one year only.

3. The challenge is to the last paragraph of the order which reads thus:

> "After receipt of the compliance report on the fulfilment of the condition no.2, the State Government may issue formal order for diversion of this forest land."

What was directed by this condition is, therefore, issuance of formal order of diversion should take place after condition no.2 is fulfilled.

4. Assailing this condition, the above petition was filed and by way of interim order the business and stalls of the petitioners was continued. Whether with

the condition challenged in this petition or without it, if the diversion was to be granted, it would be for a period of one year. The very tenure of the order speaks of temporary nature of the entire aspect. Unfortunately by reason of an order granting as an interim relief by this Court, the petitioners have continued to disturb the environmental balance for several years and the prayer is now made that the diversion permitted is permanent and the condition is for such permanent diversion. If that is so, it is still open for the Government to complete condition no.2 and issue formal order of diversion which will have to be followed by the lease for one year, as early as possible, preferably within six months from the date of receipt of this order.

5. In our opinion, any further exercise of jurisdiction of this Court under Article 226 to protect persons who were protected only for a year and have remained at the Bombay Point for several years, would be an improper exercise of extra ordinary jurisdiction. We, therefore, see no reason to interfere in this petition. Same is dismissed. The interim order stands vacated.